

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TERRY L. KIRKLAND, Administrator of the
Estate of JARED LEE KIRKLAND, Deceased,
and TERRY L. KIRKLAND and TAMMY
KIRKLAND, in their own right,

Plaintiffs,

v.

DANELLA RENTAL SYSTEMS, INC.,
DANELLA COMPANIES, INC., RAILTECH
BOUTET, INC., and RAILTECH
CONTRACTING CORP.,

Defendants.

CIVIL ACTION

NO. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendants Danella Rental Systems, Inc. and Danella Companies, Inc. (collectively, “Danella”), by and through their attorneys, Stradley, Ronon, Stevens & Young, LLP, hereby remove to the Western District of Pennsylvania the civil action styled as Terry L. Kirkland, Administrator of the Estate of Jared Lee Kirkland, Deceased, and Terry L. Kirkland and Tammy Kirkland, in their own right, v. Danella Rental Systems, Inc., Danella Companies, Inc., Railtech Boutet, Inc., and Railtech Contracting Corp., which is currently pending as Civil Action No. GD06-023368 in the Court of Common Pleas of Allegheny County, (the “State Court Action”), and state the following grounds for removal:

1. Plaintiffs, Terry L. Kirkland, Administrator of the Estate of Jared Lee Kirkland, Deceased, and Terry L. Kirkland and Tammy Kirkland, in their own right (collectively, “Plaintiffs”), commenced this action by filing a Praecept for Writ of Summons on October 2, 2006.

2. On January 6, 2010, Plaintiffs filed a Complaint in the State Court Action.

On January 7, 2010, Plaintiffs served Danella with the Complaint.

3. Plaintiff Terry Kirkland is an adult individual residing in the State of West Virginia. He is the administrator of the estate of Decedent Jared Lee Kirkland pursuant to letters of administration issued in Marshall County, West Virginia.

4. Plaintiff Tammy Kirkland is an adult individual residing in the state of West Virginia; she is Decedent Jared Lee Kirkland's mother.¹

5. Defendants Danella Rental Systems, Inc. and Danella Companies, Inc. are both Pennsylvania corporations with a principal place of business located at 2290 Butler Pike, Plymouth Meeting, Pennsylvania.

6. Defendants Railtech Boutet, Inc. and Railtech Contracting Corporation are both Ohio corporations with a principal place of business located at 25 Interstate Drive, Napoleon, Ohio.

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiffs' Complaint in the State Court Action seeks damages in excess of this Court's jurisdictional threshold of \$75,000, and the citizenship of the parties is completely diverse.

8. This Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b) because it is within thirty days of Danella's receipt of the Complaint in the State Court Action.

9. Pursuant to 28 U.S.C. § 1446(d) written notice of this Notice of Removal will be filed with the Clerk of the Court of Common Pleas of Allegheny County. Written notice of this removal is being provided to counsel.

¹ The averments contained in Paragraphs 3 and 4 were taken from Plaintiffs' Complaint.

10. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served on Danella in this case are attached hereto.

WHEREFORE, Defendants Danella Companies, Inc. and Danella Rental Systems, Inc., hereby remove the State Court Action to the United States District for the Western District of Pennsylvania.

Respectfully submitted,

/s/ Michelle Carson
Michelle Carson
Joseph McHale (to be admitted *pro hac vice*)
Gina M. Stowe (to be admitted *pro hac vice*)
Carolina G. Robinson (to be admitted *pro hac vice*)

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*Attorneys for Defendants
Danella Companies and
Danella Rental Systems, Inc.*

Dated: January 25, 2010

CERTIFICATE OF SERVICE

I, Carolina G. Robinson, hereby certify that on January 25, 2010, I caused a copy of the foregoing to be served *via* First Class U.S. Mail upon the following:

Frank R. Fleming, III, Esq.
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Railtech Boutet, Inc. and
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/s/ Carolina Robinson
Carolina G. Robinson, Esquire